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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

744 UNION PARTNERS, LLC, Plaintiff and Appellant, v. 744 UNION INVESTORS, LLC et al., Defendants and Respondents.	A145257 (City & County of San Francisco Super. Ct. No. CGC-14-542334)

Plaintiff 744 Union Partners, LLC (Partners) appeals from a judgment entered after the trial court sustained defendants' demurrer to its complaint to quiet title to San Francisco real property. We conclude Partners did not allege a viable cause of action to quiet title against defendants, and that the court acted within its discretion when it sustained the demurrer without leave to amend. Accordingly, we affirm.

I. BACKGROUND

Because this appeal challenges a trial court order sustaining a demurrer, we draw the relevant facts from the complaint and facts subject to judicial notice. (*Adams v. Paul* (1995) 11 Cal.4th 583, 586; *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1608–1609.)

On July 31, 2009, Above Water, LLC (Above Water) owned 744 Union Street, Unit #3 (744 Union), and obtained a $185,000 loan that was secured by a first deed of trust on the property. The deed of trust named Roger Kleid as beneficiary, and was recorded on August 3, 2009.

On September 15, 2010, Above Water conveyed 744 Union to Black Market, LLC (Black Market) by grant deed that was recorded the same day.

On November 6, 2013, the Kleid deed of trust was assigned to defendant 744 Union Investors, LLC (Investors) and recorded two days later.

In late 2013, the trustee began foreclosure proceedings on the Kleid deed of trust on behalf of Investors. The trustee recorded a notice of a foreclosure sale set for February 13, 2014, at 2:00 p.m.

On February 12, 2014, Black Market obtained a $15,000 loan from plaintiff 744 Union Partners, LLC (Partners) that was also secured by a deed of trust encumbering 744 Union. Partners was named as beneficiary, and the deed of trust was recorded on February 13, 2014, at 10:29 a.m..

Less than one hour after Partners' deed of trust was recorded and approximately three hours prior to the scheduled foreclosure sale on February 13, Partners filed a Chapter 11 bankruptcy petition. The foreclosure sale on the Kleid deed of trust proceeded that day irrespective of the bankruptcy. Investors was the highest bidder and purchased 744 Union. Investors was aware of Partners' bankruptcy filing.

After purchasing 744 Union, Investors moved the bankruptcy court to dismiss Partners' bankruptcy. Investors also requested an annulment of the automatic bankruptcy stay (see 11 U.S.C., § 362) and in rem relief that would bar Partners from re-filing.

In April 2014, the bankruptcy court granted Investors' motion to dismiss. In doing so, the bankruptcy court denied as moot Investors' request for annulment of the stay and in rem relief, stating: "The only evidence before the Court of [Partners'] connection to the Property is the deed of trust. While the deed of trust and all the rights thereto belong to [Partners'] estate, the Property itself does not and [Partners'] lien does not extend the automatic stay to the Property. The automatic stay only protects [Partners'] security interest in the property. [Citation.] Accordingly, the Court cannot grant in rem relief with respect to the property and there is no need to annul the stay."

On July 1, 2014, the trustee of the Kleid deed of trust executed an amended trustee's deed upon sale transferring title in 744 Union to Investors. The deed was

recorded on July 9. On July 22, 2014, Investors executed a deed of trust and assignment of rents in favor of defendant Phillips Developments, LLC (Phillips) that was recorded on July 25, 2014.

Black Market defaulted on the February 12, 2014 loan from Partners, and executed a grant deed in lieu of foreclosure purporting to transfer 744 Union to Partners on August 31, 2014.

On October 23, 2014, Partners commenced this action against Investors and Phillips to quiet title to 744 Union. Defendants demurred, and Partners responded by filing its first amended complaint.

The first amended complaint contained four causes of action. The first cause of action sought to quiet title to 744 Union on the ground that the February 13, 2014 foreclosure sale to Investors violated the automatic bankruptcy stay. Thus, Partners alleged the trustee's deed transferring 744 Union to Investors and the subsequent deed of trust and assignment of rents from Investors to Phillips were void.

The second, third, and fourth causes of action were alleged "in the alternative" and styled as actions "to foreclose against" Investors. In those causes of action, Partners alleged that if the August 31, 2014 grant deed in lieu of foreclosure to Partners by Black Market was ineffective, 744 Union remained encumbered by the deed of trust Partners recorded the morning of February 13, 2014, as well as by two other deeds of trust Partners acquired from third parties. Partners claimed it was entitled to a judgment foreclosing its deeds of trust and determining that defendants were liable for past due payments on the loans that were secured by them.

Defendants demurred. They argued that Partners was collaterally estopped from claiming that the foreclosure sale took place in contravention of the bankruptcy stay because the bankruptcy court ruled that 744 Union was not property of the estate subject to the stay. They further argued that any interests in 744 Union claimed by Partners were subordinate to the Kleid deed of trust held by Investors, and were extinguished when Investors foreclosed on the Kleid deed of trust and purchased 744 Union at the foreclosure sale.

The trial court sustained the demurrer without leave to amend. This timely appeal followed.

II. DISCUSSION

We review an order sustaining a demurrer de novo to determine whether the complaint states facts sufficient to constitute a cause of action. (*Bower v. AT & T Mobility, LLC* (2011) 196 Cal.App.4th 1545, 1552; *Stanton Road Associates v. Pacific Employers Ins. Co.* (1995) 36 Cal.App.4th 333, 340 (*Stanton Road*).) We construe the complaint liberally, treating it " ' "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. . . .' " (*Stanton Road*, *supra*, 36 Cal.App.4th at pp. 340–341; *Jager v. County of Alameda* (1992) 8 Cal.App.4th 294, 296–297.) When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Stanton Road*, *supra*, at p. 341.)

Partners contends the first amended complaint alleged a viable cause of action to quiet title because there is an "open question" about whether Partners acquired title to 744 Union superior to the title acquired by Investors. Specifically, Partners contends its title from Black Market via a grant deed in lieu of foreclosure on August 31, 2014, can be traced to the September 15, 2010 grant deed from Above Water to Black Market. Partners claims this title predates and is therefore superior to the title acquired by Investors following the February 13, 2014 foreclosure sale. But this argument ignores the validity and effect of the Kleid deed of trust and its foreclosure.

A complaint for quiet title must describe the property that is the subject of the action, and state the basis for the plaintiff's claim to title and the adverse claims to the plaintiff's title against which a determination is sought. (Code Civ. Proc., § 761.020.)

Here, Partners' amended complaint pleads the existence and validity of the Kleid deed of trust and seeks a determination that, except for a security interest, defendants Investors and Phillips have no right, title, or interest in 744 Union. Essentially, the amended complaint seeks to nullify the trustee's deed that issued following foreclosure of the Kleid deed of trust and the ensuing deed of trust recorded in favor of Phillips. The complaint alleges both are "void under state and federal law including [the automatic stay in bankruptcy provided in] Bankruptcy Code section 362, et seq." However, there are no facts alleged in the complaint to suggest that the trustee's deed issued on the Kleid foreclosure or the deed of trust in favor of Phillips are void.

The records of the bankruptcy court are properly a subject of judicial notice (see Evid. Code, § 452, subd. (d)), and make clear that the court determined the foreclosure was not conducted in violation of the automatic stay in bankruptcy provided in 11 U.S.C. section 362. Moreover, even if it were, violation of the stay in bankruptcy has no effect on the validity of the trustee's sale. "Even if the foreclosure had violated the stay, appellants would have been required to raise that claim in the bankruptcy court. 'The bankruptcy court ha[s] jurisdiction over all claims alleging willful violation of the automatic stay.' [Citation.] The existence of a federal remedy for violation must be read as an implicit rejection of state court remedies." (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1109.)

California follows a "first in time, first in right" system under which "a conveyance recorded first generally has priority over any later-recorded conveyance." (*Thaler v. Household Finance Corp.* (2000) 80 Cal.App.4th 1093, 1099.) Here, Partners has not alleged a basis for concluding its title is superior to Investors'. From the face of the amended complaint and judicially noticed documents, Investors' title can be traced back to July 2009 when Above Water executed the first deed of trust in favor of Roger Kleid as the beneficiary. Kleid assigned the deed of trust to Investors in November 2013, and Investors foreclosed on the Kleid deed of trust the following year. The trustee's deed that conveyed title to Investors after the foreclosure sale "relates back to the date when the deed of trust was executed" in July 2009. (*Dover Mobile Estates v. Fiber Form*

Products, Inc. (1990) 220 Cal.App.3d 1494, 1498 (*Dover*); see 4 Witkin, Summary of Cal. Law (10th ed. 2005) Security Transactions in Real Property, § 169, p. 970 ["On the trustee's sale of the property [following foreclosure], the purchaser acquires the trustor's interest in the property as of the date that the deed of trust was originally executed"].) As a result, Investors chain of title dates to July 2009. Partners traces its title to September 15, 2010. Partners has not pled that its title is superior to Investors'.

Partners also argues it has adequately alleged a cause of action for declaratory relief. Partners' claim for declaratory relief turns on its incorrect assertion that there is a controversy over whether its title is superior to Investors. As we have explained, Partners complaint does not establish that its title is superior to Investors. Accordingly, there is no "actual controversy relating to the legal rights and duties" of the parties justifying declaratory relief. (Code Civ. Proc., § 1060.)

Finally, Partners contends the trial court erred by not granting it leave to amend. But leave to amend should only be granted where the plaintiff establishes a reasonable possibility that a pleading's defects can be cured by amendment. (*Stanton Road, supra*, 36 Cal.App.4th at p. 341.) Partners has made no such showing. It claims it can amend the quiet title cause of action to exclude allegations about the violation of the bankruptcy stay. Such an amendment would have no effect on the viability of the complaint. Partners also argues it can amend its complaint to allege a claim for declaratory relief, but its argument rests on the faulty premise that the Kleid deed of trust "merely grant[ed] a security interest" to Investors in 744 Union but not title. As we explained, Investors acquired title to 744 Union that dates from July 2009 because the trustee's deed conveying the property to Investors relates back to the date the Kleid deed of trust was executed. (*Dover, supra*, 220 Cal.App.3d at p. 1498.) The trial court's denial of leave to amend was not an abuse of discretion.

III. DISPOSITION

The judgment is affirmed.

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Siggins,J.

We concur:

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McGuiness,P.J.

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Pollak, J.